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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,407	08/27/2001	Hideki Noma	450108-02924	4158

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EXAMINER	
THEIN, MARIA TERESA T	
ART UNIT	**PAPER NUMBER**
3627	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/914,407	NOMA, HIDEKI	
	Examiner	Art Unit	
	Marissa Thein	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 7, 2005 has been entered.

Response to Amendment

Applicant's "Amendment submitted with Request for Continued Examination" filed on November 7, 2005 has been considered.

Claims 1, 6, 11, 16, 21, 26, 31, 36, 41, and 46 are amended. Claims 1-50 remain pending in this application.

Information Disclosure Statement

The Japan Application Nos. 1-1-3740 and 11-188678 were not considered because there were no English translations. In addition, Japan Application No. 11-126017 is not considered because there was no copy provided.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,260,750 to Barad et al. in view of PCT World Publication No. WO 99/32203 to Schorr et al.

Regarding claims 1, 6, 11, 16, and 21, Barad discloses a system, method, device, and computer program for purchasing or receiving an order for a virtual creature (personalized toy) existing as a software and programmed to act or more, comprising: first communication means provided on the order sender side (accessing a computer in 110 is performed by customer 60) of the virtual creature (collecting orders, col. 5, lines 50-61, Figure 5); second communication means provided on the order receiving side of the virtual creature (processing ordering, col. 5, lines 50-51; col. 6, lines 52-61, Figure 5); a communication path to connect between the first and the second communication means (Figure 5; col. 5, lines 50-57; col. 6, lines 50-59); the second communication means comprising: question data transmission means for transmitting questions data regarding changeable items in the software (select attributes to change) of the virtual creature and/or hardware holding a recording medium in which the software is stored to the first communication means that accesses via the communication path (Figure 5, col. 5, line 66- col. 6, line 15; col. 6, lines 31-39); wherein said changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program (the toy may be programmed to say a .....move in a particular way, col. 3, lines 63-65); and data processing means for conducting the predetermined data processing in order to form the virtual creature and/or the hardware reflecting the order sender's answer to the question to be

transmitted from the first communication means via the communication path (Figure 5, col. 6, lines 37-40).

However, Barad does not explicitly disclose wherein the action configuration program comprises a probability automation to determine a next action. Barad does disclose the toy can be programmed to move in a particular way (col. 3, lines 63-55).

Schorr, on the other hand, teaches wherein the action configuration program comprises a probability automation to determine a next action (page 16, line 17 – page 17, line 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system, method, device, and computer program of Barad, to include the action configuration program comprises a probability automation to determine a next action, as taught by Schorr, in order to provide interaction between the child and the figure (virtual creature) (Schorr, page 1, line 8).

Regarding claims 2-5, 7-10, 12-15, 17-20, 22-25, 27-30, 32-35, 37-40, 42-45, and 47-50, Barad discloses the changeable item is the specification on the action or motion (programmed to move in a particular manner) of the virtual creature and robotic device (col. 3,lines 63-67); changeable items are the design of the virtual creature or the hardware and robotic device (col. 5, lines 52-65, Figure 7, Figures 13-17; Figures 21-22); the data processing means analyzes the taste and/or the living environment of the order sender based on the order sender's answer to the question and conducts the data processing according to the analysis result (Figure 5, col. 6, lines 30-40; col. 6, lines 49-59); and the data processing means forms the image data of computer graphic image of

the virtual creature and robotic device (representational image showing he personalized toy) and/or the hardware reflecting the order sender's answer to the question, and transmits the image data to the first communication means via the communication path (Figure 5; col. 6, lines 60-66)

Regarding claims 26, 31, 36, 41 and 46, Barad discloses a system, method, device, and computer program for purchasing or receiving an order of a robotic device (personalized toy...may include other types of components, such as electronic components housed within the toy and programming for such electronics....toy may be programmed to move in a particular manner, col. 3, lines 57-67) to act or move based on the predetermined program, comprising: first communication means provided on the order sender side (accessing a computer in 110 is performed by customer 60) of the robotic device (collecting orders, col. 5, lines 50-61, Figure 5); second communication means provided on the order receiving side of the robotic device (processing ordering, col. 5, lines 50-51; col. 6, lines 52-61, Figure 5); a communication path for connecting the first and the second communication means (Figure 5; col. 5, lines 50-57; col. 6, lines 50-59); the second communication means comprising: question data transmission means for transmitting questions data on changeable items (select attributes to change) of the robotic device to the first communication means that accessed via the communication path (Figure 5, col. 5, line 66- col. 6, line 15; col. 6, lines 31-39); wherein said changeable items include internal conditions, which include at least one of a emotional tendency, an instinct tendency, or an action configuration program (the toy may be programmed to say a .....move in a particular way, col. 3, lines 63-65); and

data processing means for conducting the predetermined data processing to construct the robotic device by reflecting the order sender's answer to the question to be transmitted from the first communication means via the communication path (Figure 5, col. 6, lines 37-40).

However, Barad does not explicitly disclose wherein the action configuration program comprises a probability automation to determine a next action. Barad does disclose the toy can be programmed to move in a particular way (col. 3, lines 63-55).

Schorr, on the other hand, teaches wherein the action configuration program comprises a probability automation to determine a next action (page 16, line 17 – page 17, line 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system, method, device, and computer program of Barad, to include the action configuration program comprises a probability automation to determine a next action, as taught by Schorr, in order to provide interaction between the child and the figure (virtual creature) (Schorr, page 1, line 8).

Response to Arguments

Applicant's arguments with respect to claims 1-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,253,058 to Murasaki et al. discloses an interactive toy that can display emotional expressions.

PCT World Publication No. WO 97/14102 to Roseborough discloses a synthetic creature in which links representing limbs are loosely connected by joints to independently interact and implement the physics of everyday life-like actions in a character.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mtot
January 21, 2005

STEVE B. MCALLISTER
PRIMARY EXAMINER